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**BZA-1856**  
**MICHAEL AND SHERYL WEIST**  
**Variance**

**STAFF REPORT**  
**June 21, 2012**

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**REQUEST MADE, PROPOSED USE, LOCATION:**

Petitioners are requesting a variance to permit a 10' setback from the Flood Plain zoning boundary instead of the required 25'. The variance is needed for a proposed addition onto an existing single-family home to convert it to a two-family structure. The property is located at 6940 SR 26 East, Perry 21 (SW) 23-3. (UZO 4-4-3(b))

**AREA ZONING PATTERNS:**

The 8.9 acre site in question was at one time entirely zoned Flood Plain. The South Fork of the Wildcat Creek runs through petitioners' property; the confluence of the South and Middle Forks is only a quarter mile to the north. In 1985, fill dirt was added to the site to increase the property's elevation; a Flood Plain Certification was done and 1.748 acres were found to be above the elevation of the 100 year flood. At that time, property taken out of the FP zone and surrounded by FP zoning, automatically became zoned FC, Forestry Conservation. The FC zone became the current AW, Agricultural Wooded zone with the adoption of NUZO in 1998. This month at the June County Commissioners meeting, the 1.748 acres of this site zoned AW were rezoned Agricultural (Z-2490) so the petitioners would be permitted to have a duplex on site.

Surrounding properties are a mix of FP and AW zoning.

**AREA LAND USE PATTERNS:**

The site has an existing house and pole barn within the confines of the area above the Flood Plain. The pole barn at the north edge of the property and the septic is to the west. Most properties in the area support unplatted large-lot residences.

There is a 25' building setback from the FP zoning district; construction within 100' of the FP zone is required to meet the Flood Protection Grade. This means the lowest floor of any building within 100' of the FP is required to be 2' above the FP elevation.

**TRAFFIC AND TRANSPORTATION:**

This request would not substantially affect traffic in the area. The property is served by a shared off-site driveway from SR 26 E that serves at least two other homes. Whether a new driveway permit would be necessary for this minor change of use is the decision of the Crawfordsville Office of INDOT.

## ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

The site is served by individual septic system and well. A letter from the County Health Department states that, the office “has no objection to the proposed rezoning...” The letter continues by saying, “The single-family dwelling which will be a duplex is served by an onsite sewage disposal system and private water well. The soils at this site are well drained with no seasonal high water table or limiting layers such as a dense till or bedrock. The Health Department would allow the existing system to be replaced in the area of the soil borings if it would become necessary due to a failure to function properly.”

## STAFF COMMENTS:

Petitioners originally met with staff and explained that they want their daughter and family to live on the property with them. After research and discussion of current conditions on site, it was determined because of Flood Plain restraints that the petitioners had two options to meet their goal on site:

1. Turn the existing single-family home into a duplex or
2. Add an additional bedroom to the existing single-family home.

Option 1 also required a rezone from AW to A, which was granted by the County Commissioners at their June 2012 meeting; the A zoning district permits a duplex but the AW does not. Petitioners desire to turn the single-family home into a duplex by constructing a 20' x 40' 800 square feet to addition the footprint of the structure, setback 10' from the edge of the FP zoning boundary, instead of the ordinance required 25'.

The siting of the proposed addition is dictated by the existing locations of the pole barn to north of the home and the septic to the west. While the expansion of the home is a practical difficulty it is not an ordinance defined hardship because adequate room exists on-site to build a conforming addition.

Regarding the ballot items:

1. The Area Plan Commission on June 20, 2012 determined that the variance requested **IS NOT** a use variance.

And it is staff's opinion that:

2. Granting this variance **WILL NOT** be injurious to the public health, safety, and general welfare of the community. The variance requested will only affect the petitioners because the flood plain line is on their own property. At the time of construction, petitioners created an island of fill to construct their home and also installed a septic that has the ability to handle the additional bathrooms. As evident by the fact that the County health Department has no objections to petitioners' plans.
3. Use and value of the area adjacent to the property included in the variance request **WILL NOT** be affected in a substantially adverse manner. This variance will not change the way adjacent neighbors use their land.

4. The terms of the zoning ordinance are being applied to a situation that **IS NOT** common to other properties in the same zoning district. At the time of construction of the existing home, the ordinance permitted filling in the FP and constructing a home on the fill. That is not permitted under the current ordinance.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. With the existing layout of the site, the proposed expansion may create a practical difficulty but it does not constitute an ordinance defined hardship

**Note:** Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed or solely based on economic gain. The petitioner has other construction options that would allow this structure to be used as a duplex; adding living space to the second floor or at another location on the site where all development standards could be met.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship. Petitioners can improve their home in a way that both fulfills their goals and meets the requirements of the ordinance.

**STAFF RECOMMENDATION:**

Denial